

ROY COOPER

Governor

DIONNE DELLI-GATTI

Secretary

BRAXTON DAVIS

Director



CRC-21-18

June 4, 2021

MEMORANDUM

TO: Coastal Resources Commission
FROM: Jonathan Howell
SUBJECT: Amendments to 15A NCAC 7J .0405 – Permit Modifications

After a CAMA Major permit is issued, it is common for an applicant to request modifications of the active permit. This can be due to issues ranging from changes in construction methodology to a permittee's desire to change the size or type of development. 15A NCAC 7J .0405 outlines the parameters for determining whether processing of the proposed changes should be accomplished through a "major modification" or a "minor modification" process, as well as the fees associated with the processing.

The criteria associated with permit modifications were originally established in 1978. A number of changes having taken place since that time, including the processes by which other agencies approve modifications of CAMA major permits. This has resulted in a need to update your rule language to incorporate changes in other agencies' processes and fees, as well as updates to the parameters for determining the type of modification required. The Division recommends that the Commission consider the following changes to the Rules governing permit modifications:

- a) **Remove language specific to bulkheads, piers, docks, boathouses and boat ramps.** Modifications to permits are site-specific and project-specific. Projects that may be permitted under a minor modification for the NC Dept. of Transportation may be processed through a major modification for a single-family dwelling. The scope of the original project is considered as part of the final determination.
- b) **Update the fee schedule.**
As currently written, a minor modification has a \$100 processing fee, and a major modification has a \$250 processing fee. Depending on the type of 401 certification required (written vs. non-written concurrence), the Division of Water Resources requires a fee split in conjunction with a Memorandum of Agreement (MOA) established in 2001. When a fee split is required, the DCM should be charging \$400 for a major modification to allow for the fee split as outlined in the MOA.

I look forward to continuing discussions on these amendments at our upcoming meeting in Beaufort.



North Carolina Department of Environmental Quality | Division of Coastal Management
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15A NCAC 07J .0405 is readopted as published in 34:09 NCR 762 as follows:

15A NCAC 07J .0405 PERMIT MODIFICATION

(a) ~~An applicant~~ A permit holder may apply for a major or minor modification ~~modify his permitted~~ of an active major development and/or dredge and fill ~~permit. project only after approval by the Department.~~ In order to modify an active ~~a permitted project~~ major development or dredge and fill permit the permit holder ~~applicant must shall~~ make a written request to the ~~Department~~ Division of Coastal Management showing ~~in detail~~ the proposed modifications. ~~Minor modifications may be shown on the existing approved application and plat.~~ Modification requests ~~which, in the opinion of the Department~~ that require notice and review pursuant to G.S. 113A-119 based on the Division's assessment of potential impacts on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources or public trust rights are considered major and ~~will shall~~ require a new application. ~~application following the major permit procedures defined in NCAC 07J .0200. Modification requests are subject to the same processing procedure applicable to original permit applications.~~ Modification requests that, based on the Division's assessment of potential impacts to adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources or public trust rights, are considered minor shall require a permit drawing and project narrative and shall ~~A permit need not~~ be circulated to ~~all those agencies commenting on the original application and the adjacent riparian property owners..if the Commission determines that the modification is so minor that circulation would serve no purpose.~~

(b) Modifications to a permitted project ~~which that~~ are imposed or ~~made at the request of~~ or requested by the U.S. Army Corps of Engineers or other federal agencies ~~must shall~~ be approved by the ~~Department~~ Division of Coastal Management under provisions of Paragraph (a) of this ~~Rule. Rule dealing with permit modification procedures.~~

(c) ~~Modifications of projects for the benefit of private waterfront property owners which that meet the following criteria shall be considered minor modifications and shall not require a new permit application, but must shall be approved under the provisions of Paragraph (a) of this Rule:~~

(1) ~~for bulkheads:~~

(A) ~~Bulkhead bulkhead must shall~~ be positioned so as not to extend more than an average distance of two feet waterward of the mean high water contour; ~~contour and in no place shall the bulkhead be more than five feet waterward of the mean high water contour; and~~

(B) ~~All all~~ backfill must ~~shall~~ come from an upland source; and

(C) ~~No no~~ marsh area may be excavated or filled; and

(D) ~~Work work must shall~~ be undertaken because of the necessity to prevent significant loss of private residential property due to erosion; and

(E) ~~The the~~ bulkhead must ~~shall~~ be constructed prior to any backfilling activities; and

(F) ~~The the~~ bulkhead must ~~shall~~ be constructed so as to prevent seepages of backfill materials through the bulkhead; and

(G) ~~The the~~ bulkhead may not be constructed in the Ocean Hazard AEC;

(2) ~~for piers, docks and boathouses:~~



- (A) ~~— The the modification or addition may shall not be within 150 feet of the edge of a federally maintained channel; and~~
- (B) ~~— The the structure, as modified, must shall be 200 feet or less in total length offshore; and~~
- (C) ~~— The the structure, as modified, must shall not extend past the four feet mean low water contour line (four feet depth at mean low water) of the waterbody; and~~
- (D) ~~— The the project as modified, must shall not exceed six feet in width; and~~
- (E) ~~— The the modification or addition must shall not include an enclosed structure; and~~
- (F) ~~— The the project shall continue to be used for private, residential purposes;~~
- (3) ~~— for boatramps:~~

(A) ~~— The the project, as modified, would shall not exceed 10 feet in width and 20 feet offshore; and~~

(B) ~~— The the project shall continue to be used for private, residential purposes.~~

~~(d)(c)~~ ~~An applicant~~ A permit holder may modify ~~his~~ an active permitted minor development ~~project~~ permit only after approval by the local permit-letting ~~authority.~~ authority, or the Division of Coastal Management if the local government does not have a delegated minor permit program pursuant to G.S. 113A-117 and 15A NCAC 07I. In order to modify a permitted ~~project~~ project, the ~~applicant~~ must permit holder shall make a written request to the local minor permit-letting authority or the Division of Coastal Management showing in detail the proposed modifications. The request shall be reviewed ~~approved in consultation with the appropriate Division of Coastal Management field consultant and granted~~ if all of the following provisions are met:

- (1) ~~— The size of the project is expanded less than 20 percent of the size of the originally permitted project; and~~
- (2)(1) ~~A a signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications; and the permit holder notifies the adjacent property owners in accordance with 15A NCAC 7J .0204 (b)(5)(B); and~~
- (3)(2) ~~The the proposed modifications are consistent with all local, ~~state,~~ State, and federal standards and local Land Use Plans in effect at the time of the modification requests; and~~
- (4)(3) ~~The the type or nature of development is not changed.~~

Failure to meet ~~these~~ the provisions of this Paragraph shall necessitate the submission of a new permit application.

~~(e)(d)~~ The applicant for a minor modification of a major permit shall submit with the request a check or money order payable to the Department of Environmental Quality (\$100). The applicant for a major permit modification of a major permit ~~must~~ shall submit with the request a check or money order payable to the Department in the sum of ~~one hundred dollars (\$100.00) for a minor modification and two hundred fifty dollars (\$250.00) or four hundred dollars (\$400) in cases where fees are consolidated with the N.C. Division of Water Resources.~~ for a major modification.

*History Note: Authority G.S. 113A-119; 113A-119.1; ~~113A-124(e)(5);~~ 113-229; 113A-124(c)(8);
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984;
Readopted Eff. April 1, 2021.*



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